

ARTICLE 7

VARIANCES

SECTION 7-1. Authorization for Variance. As provided for in Section 9 of Chapter 665 of the Acts of 1956, as now in force or hereafter amended, and subject to the provisions of Sections 7-2, 7-3 and 7-4, the Board of Appeal may, in a specific case after public notice and hearing, grant a variance from the terms of this code; provided, however, that such grant shall lapse and become null and void unless such variance is used within two years after the record of said Board's proceedings pertaining thereto is filed in the office of the Building Commissioner pursuant to Section 8 of said Chapter 665.

↔**SECTION 7-2. Procedure for Appeal.** Each appeal for a variance shall be filed in quadruplicate with the Building Commissioner, who shall retain one copy for his files and transmit the other copies as follows: one to the Board of Appeal, one to the Boston Redevelopment Authority, and the other to the Zoning Commission.

In each of the following cases, the Boston Redevelopment Authority shall, within thirty days after the date of such transmittal, file with the Board of Appeal a report with recommendations, together with material, maps or plans to aid the Board of Appeal in judging the appeal and determining special limitations and safeguards:

- (a) an appeal for the erection or alteration of a building to a height greater than that authorized by this code;
- (b) an appeal for a nonconforming use of land with an area of more than 20,000 square feet;
- (c) an appeal for a nonconforming use of an existing building or buildings with a gross floor area in excess of 2,000 square feet or a floor area ratio more than fifty percent greater than that permitted in the district in which it or they are located; and
- (d) an appeal for a commercial or industrial use in a residential district, on a parcel of land not previously used for a commercial or industrial purpose.

In any other case, the Boston Redevelopment Authority may, within thirty days after the date of such transmittal, file with the Board of Appeal a report with recommendations in connection with the appeal for variance therein.

The Board of Appeal shall not hold a hearing nor render any decision on an appeal for a variance until such report with recommendations has been received and considered, provided that if no such report is received within said thirty days, the Board of Appeal may hold a hearing and render its decision without such report.

(↔As amended on May 26, 1970)

↔SECTION 7-3. **Conditions Required for Variance.** The Board of Appeal shall grant a variance only if it finds that all of the following conditions are met:

- (a) That there are special circumstances or conditions, fully described in the findings, applying to the land or structure for which the variance is sought (such as, but not limited to, the exceptional narrowness, shallowness, or shape of the lot, or exceptional topographical conditions thereof) which circumstances or conditions are peculiar to such land or structure but not the neighborhood, and that said circumstances or conditions are such that the application of the provisions of this code would deprive the appellant of the reasonable use of such land or structure;
- (b) That, for reasons of practical difficulty and demonstrable and substantial hardship fully described in the findings, the granting of the variance is necessary for the reasonable use of the land or structure and that the variance as granted by the Board is the minimum variance that will accomplish this purpose;
- (c) That the granting of the variance will be in harmony with the general purpose and intent of this code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and
- (d) That, if the variance is for a Development Impact Project, as defined in Section 80B-7, the applicant shall have complied with the Development Impact Project Exaction Requirements set forth in Section 80B-7.3, except if such variance is for a deviation from said requirements.

In determining its findings, the Board of Appeal shall take into account: (1) the number of persons residing or working upon such land or in such structure; (2) the character and use of adjoining lots and those in the neighborhood; and (3) traffic conditions in the neighborhood.

(↔As amended on December 29, 1983, February 27, 1986, and May 9, 1996.)

↔SECTION 7-4. **Other Conditions Necessary as Protection.** In approving a variance, the Board of Appeal may attach such conditions and safeguards as it deems necessary to assure harmony with the general purposes and intent of this code, such as, but not limited to, the following:

- (a) a requirement of front, side, and rear yards greater than the minimum required by this code;
- (b) requirement of screening of parking areas and other parts of the lot from adjoining lots or from the street by walls, fences, planting, or other devices;
- (c) modification of the exterior features or appearance of the structure;
- (d) limitation of the size, number of occupants, method and time of operation, and extent of facilities;
- (e) regulation of number, design, and location of access drives and other traffic features; and
- (f) requirement of off-street parking and other special features beyond the minimum required by this or other applicable codes or regulations.